UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

INTEGRATED CONTROL SYSTEMS INC., & ROBERT A. JACOBSEN, Plaintiffs,	:	
-vs-	:	Civ. No. 3:00cv1295 (PCD)
ELLCON-NATIONAL, INC., Defendant.	:	

RULINGS ON MOTION FOR ORDER IN AID OF POST-JUDGMENT DISCOVERY, MOTION FOR PROTECTIVE ORDER AND MOTION TO CLARIFY JUDGMENT

Defendant Ellcon-International, Inc. ("Ellcon") moves for leave to conduct post-judgment discovery pursuant to FED. R. CIV. P. 69(a). Plaintiff Integrated Control Systems, Inc. ("ICS") moves for a protective order and moves to clarify the judgment pursuant to FED. R. CIV. P. 60. For the reasons set forth herein, Ellcon's motion for leave to conduct discovery is granted in part, ICS's motion for a protective order is denied and ICS's motion to clarify the judgment is denied.

I. BACKGROUND

On September 26, 2000, following a ruling confirming an arbitration award in its favor, judgment entered for Ellcon in the amount of $1,085,219.48. On February 26, 2001, Ellcon moved to amend the judgment to clarify that the individual plaintiff, Robert Jacobsen, was not liable for the judgment and that the judgment was effective only against a Connecticut corporation bearing the ICS name ("ICS Connecticut.") The motion for clarification was granted as to Jacobsen but was denied as to the corporation because "[t]here [was] no claim that there is an Integrated Control Systems that is not incorporated in Connecticut which might be mistaken for" it. After registering the judgment in Florida, ICS sought to depose officers of a Florida corporation bearing the ICS name. ICS moved for

sanctions after the officers failed to attend the depositions. The United States District Court for the Middle District of Florida denied the motion. The Florida Court concluded that, at least in the minds of the parties, there was confusion as to the identity of the judgment debtor and that it would permit the motion to be reasserted if this Court found ICS Florida to be an intended judgment debtor.

II. MOTION IN AID OF POST-JUDGMENT RECOVERY

Ellcon seeks leave to depose ICS Connecticut, James B. Irwin, Sr., Chairman of ICS, and Richard L. Strada, ICS's accountant. ICS argues that the discovery sought by Ellcon is overbroad and that Ellcon may not depose third parties before deposing ICS.

FED. R. CIV. P. 69(a) provides in relevant part that "[i]n aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held." The creditor "is entitled to discover the identity and location of any of the judgment debtor's assets, wherever located." *Nat'l Serv. Indus. v. Vafla Corp.*, 694 F.2d 246, 250 (11th Cir. 1982). Such discovery is not a license to inquire into the assets of non-judgment debtors. *Magnaleasing, Inc. v. Staten Island Mall*, 76 F.R.D. 559, 561 (S.D.N.Y. 1977). Discovery pertaining to the assets of non-judgment debtors is permissible when there is a reasonable belief that they have received assets transferred from the judgment-debtor. *Id.* In conducting post-judgment discovery, a party is entitled to utilized all available discovery measures. *See id.* at 560 n.1.

The above standard does not impose substantial limitations on permissible discovery, provided that the discovery sought by Ellcon is relevant to locating ICS assets sufficient to satisfy the judgment.

See Nat'l Serv. Indus., 694 F.2d at 250. The discovery proposed by Ellcon is well within the scope of FED. R. CIV. P. 69(a), with one exception. In its document request attached to the proposed notice of deposition of ICS Connecticut pursuant to FED. R. CIV. P. 30(b)(6), Ellcon seeks documents that predate the March 2, 1998 agreement which established the business relationship of the parties. Ellcon does not establish how this information is relevant to ascertaining the present location of assets sufficient to satisfy the judgment, *see* FED. R. CIV. P. 26(b)(1), thus it is not entitled to discovery of documents produced earlier than March 2, 1998.

ICS's argument that Ellcon cannot depose Irwin or Strada is similarly without merit. There is no requirement that a corporate party first be deposed through FED. R. CIV. P. 30(b)(6) before its board, officers, agents or associates may be deposed. The individuals Ellcon seeks leave to depose are alleged to have knowledge of ICS's operations. As such, ICS need not establish a necessity to depose them, only that they, by virtue of their occupation, may have knowledge of ICS's financial transactions. Ellcon contends, as it must, that it has no intention of probing into their personal financial affairs. *See Blaw Knox Corp. v. AMR Indus., Inc.*, 130 F.R.D. 400 (E.D. Wis. 1990)(holding that party pursuing discovery must show necessity before seeking discovery of non-party's assets). Framed as such, the discovery sought is permissible and Ellcon will not be required to first depose the corporation before deposing the individual witnesses.[1] The motion for post-judgment discovery is granted as limited by the foregoing discussion.

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[1] ICS also argues that the discovery sought is for purposes of collecting the judgment from third parties on an alter ego theory. Even if Ellcon sought discovery to establish its theory, which does not appear at present to be the case, such discovery is not necessarily impermissible. *See First City, Texas Houston, N.A. v. Rafidain Bank*, 281 F.3d 48, 54 (2d Cir. 2002)(discovery on alter ego theory permissible even though party claimed to be alter ego of judgment debtor was not a party to judgment); *Aioi Seiki, Inc. v. JIT Automation, Inc.*, 11 F. Supp. 2d 950, 952-54 (E.D. Mich. 1998)(FED. R. CIV. P. 69(a) is the proper procedure by which to address alter ego theory).

III. MOTION FOR A PROTECTIVE ORDER

ICS moves for a protective order limiting the scope of discovery to ICS Connecticut and delaying depositions of individual witnesses until after the deposition of the corporation. As set forth in *supra* Part II, Ellcon is granted leave to pursue discovery as consistent with FED. R. CIV. P. 69(a). ICS has not established good cause for issuance of an order limiting discovery. *See Penthouse Int'l, Ltd. v. Playboy Enters.*, 663 F.2d 371, 391 (2d Cir. 1981) (citation omitted); *see also* FED. R. CIV. P. 26(c); *Dove v. Atl. Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992) (burden is on moving party to show good cause), nor has it established that the discovery sought is for purposes of harassment or abuse of process. *Bridge C.A.T. Scan Assocs. v. Technicare Corp.*, 710 F.2d 940, 944-45 (2d Cir. 1983). The motion for a protective order is denied.

IV. MOTION TO CLARIFY JUDGMENT

ICS again moves to clarify the judgment and limit the same to ICS Connecticut. It argues that the issue is now ripe for adjudication because of the Florida ruling denying the motion for contempt. Ellcon responds that there is no clerical mistake in the judgment to justify the correction sought by ICS.

A motion to clarify judgment pursuant to FED. R. CIV. P. 60(a) permits correction of "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission." FED. R. CIV. P. 60(a) is limited to modifications necessary to ensure that the judgment reflects the substance of the actual decision. *Truskoski v. ESPN, Inc.*, 60 F.3d 74, 77 (2d Cir. 1995). "[A] motion under Rule 60(a) can only be used to make the judgment or record speak the truth and

cannot be used to make it say something other than what originally was pronounced." *Hodge ex rel. Skiff v. Hodge*, 269 F.3d 155, 158 (2d Cir. 2001)(internal quotation marks omitted).

ICS acknowledges "that it is liable under this judgment but seeks clarification of the judgment so that the scope of post-trial discovery can properly be limited to the enforcement of the judgment against ICS rather than a hunt for other potential parties to impose liability." The only apparent indication of ICS's corporate status is its alleged state of incorporation. The ICS corporate structure was not litigated in the course of the proceedings on the arbitration award, thus no finding was rendered as to that question. The business agreement which was the subject of the arbitration proceedings is also silent on ICS's state of incorporation. It is not entirely clear that amending the judgment to include ICS's state of incorporation would give its alleged state of incorporation the imprimatur of a finding where no such finding was made. *See id.* It is further not apparent that this is a simple misnomer, the correction of which would effect no substantive change in the judgment. *See Fluoro Elec. Corp. v. Branford Assocs.*, 489 F.2d 320, 325-26 (2d Cir.1973); *see also Staodynamics, Inc. v. Arrow Medical Services, Inc.*, No. Civ. A. 89-253, 1989 WL 59629, at *1 (E.D. Pa. June 2, 1989).

It suffices to say that the existence of a Florida corporation does not establish a clerical mistake in the judgment. The judgment is clear as to ICS Connecticut's liability, and Ellcon manifests no intention to enforce the judgment against another corporation. Should the issue of out-of-state enforcement arise following Ellcon's discovery efforts, it will be dealt with in due course and after the parties have provided sufficient evidence to render a finding on the issue. At present, there is no need for such a determination. The motion for clarification is denied.

V. CONCLUSION

Ellcon's motion in aid of post-judgment discovery (Doc. 23) is **granted in part**, ICS's motion for a protective order (Doc. 25) is **denied** and ICS's motion to clarify the judgment (Doc. 28) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, May ___, 2002.

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Peter C. Dorsey
United States District Judge